

MEMORANDUM OF LAW

DATE: October 11, 1995

TO: Mary Rea, Assistant Director, Risk Management Department

FROM: City Attorney

SUBJECT: Designation of Beneficiaries for Supplemental Pension and Savings Plan Funds

QUESTION PRESENTED

Must a City employee designate his or her spouse as beneficiary of one hundred percent (100%) of his or her Supplemental Pension and Savings Plan ("SPSP") funds?

SHORT ANSWER

No. California community property laws require that an employee name a spouse as beneficiary to only the spouse's community property interest in the plan funds, which equals fifty percent (50%) of the funds.

BACKGROUND

The City's SPSP currently requires an employee to designate his or her spouse as beneficiary of one hundred percent (100%) of the employee's SPSP funds. The Risk Management Department proposes a change to this requirement which would allow an employee to designate someone other than his or her spouse as a beneficiary. The spouse would still be entitled to fifty percent (50%) of the SPSP funds and one or more beneficiaries could share in the remaining fifty percent (50%).

Ken Murray, Wyatt Company advisor for the SPSP, asserts such a distribution is prohibited by law. He cites the Retirement Equity Act ("REA") of 1984 as authority for this proposition. Specifically, Mr. Murray asserts that a spouse must be designated as the one hundred percent (100%) beneficiary and that for the City to allow employees to do otherwise would circumvent Internal Revenue Code requirements. You have asked if Mr. Murray's interpretation of the beneficiary requirements for the SPSP are correct.

ANALYSIS

The City's SPSP is a defined contribution plan. As a general rule, such plans are governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. Sections 1000 through 1200. The REA, cited

by Mr. Murray, amended ERISA in 1984. ERISA, by its own terms as defined in 29 U.S.C. Section 1003, does not apply to an employee benefit plan if that plan is a governmental plan as defined in 29 U.S.C. Section 1002(32). That section defines the term "governmental plan" as "a plan established or maintained for its employees by the government of the United States, by the government of any state or political subdivision thereof, or by any agency or instrumentality of any of the foregoing."

This section makes it clear that the SPSP is not governed by the requirements enunciated in ERISA and the REA. Beneficiary requirements are, therefore, found in the general community property laws of California.

California courts have held that pension rights which are earned during the course of a marriage are the community property of the employee and his or her spouse. *French v. French*, 17 Cal. 2d 775 (1941). The surviving spouse is entitled to fifty percent (50%) of the pension benefits earned by the SPSP participant spouse during the marriage. However, the participant spouse has the power to designate someone other than his or her spouse as beneficiary of the fifty percent (50%) of the SPSP account which represents his or her half of the community property. *Patillo v. Norris*, 65 Cal. App. 3d 209 (1976); *Polk v. Polk*, 228 Cal. App. 2d 763 (1964). Thus, under current California community property law, a married SPSP participant is not required to name his or her spouse as the beneficiary of one hundred percent (100%) of the SPSP account. Rather, the amount of SPSP pension funds a surviving spouse is entitled to is limited to the surviving spouse's community property interest which equals fifty percent (50%) of the funds. Of course, an SPSP participant could still choose to name his or her spouse as full beneficiary. Also, nothing precludes an employee from naming someone other than his or her spouse as beneficiary if the spouse waives, in writing, his or her right to a fifty percent (50%) share of the community property interest.

CONCLUSION

The provisions of the ERISA and the REA are specifically not applicable to government plans. Therefore, California community property law governs SPSP distributions upon death. Under California law, an employee must designate the spouse as beneficiary to only that portion the spouse is entitled to under community property law. That amount is fifty percent (50%).

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

SAM:jrl(x043.2)

ML-95-72